

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher DeNitto	Team: Team # 2	CCRB Case #: 200713671	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/18/2007 1:37 PM	Location of Incident: 166th Street & Morris Avenue.	Precinct: 44	18 Mo. SOL 3/18/2009	EO SOL 3/18/2009	
Date/Time CV Reported Thu, 09/20/2007 10:10 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/20/2007 10:10 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Klein	28772	936874	044 PCT
2. CPT Brian Mullen	00000	906885	044 PCT
3. POM Jonathan Rivera	09893	939319	044 PCT
4. Officers			044 PCT
5. An officer			044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Kennedy	31302	930469	044 DET
2. POM Anthony Russo	04187	921733	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Rivera	Abuse: PO Jonathan Rivera searched § 87(2)(b)	
B.POM Robert Klein	Abuse: PO Robert Klein searched § 87(2)(b)	
C.POM Robert Klein	Abuse: PO Robert Klein searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Jonathan Rivera	Abuse: PO Jonathan Rivera searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
E. An officer	Discourtesy: An officer spoke obscenely to § 87(2)(b)	
F.CPT Brian Mullen	Abuse: Lt. Brian Mullen searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
G.POM Robert Klein	Force: PO Robert Klein used a chokehold against § 87(2)(b)	
H.POM Jonathan Rivera	Force: PO Jonathan Rivera used pepper spray against § 87(2)(b)	
I. Officers	Force: Officers struck § 87(2)(b) with a flashlight.	
J. Officers	Force: Officers used physical force against § 87(2)(b)	

Synopsis

On September 20, 2007, § 87(2)(b) called the CCRB and filed a complaint regarding an incident that took place on September 18, 2007. At approximately 1:37pm, § 87(2)(b)'s nephew, § 87(2)(b) and his friend, § 87(2)(b) were pulled over by PO Robert Klein and PO Jonathan Rivera on 166th Street and Morris Avenue in the Bronx. § 87(2)(b) was seated in the front passenger seat and § 87(2)(b) was driving. As PO Klein spoke to § 87(2)(b) he smelled the odor of marijuana emanating from § 87(2)(b)'s car. PO Klein then instructed § 87(2)(b) and § 87(2)(b) to get out of the car and they did so. PO Rivera then allegedly searched § 87(2)(b) (**Allegation A**) and PO Klein searched § 87(2)(b) (**Allegation B**). PO Klein and PO Rivera then proceeded to search the interior of § 87(2)(b)'s van. PO Klein searched the driver side and PO Rivera searched the passenger side (**Allegation C and D**). By this time § 87(2)(b) had arrived on the scene because § 87(2)(b) called her earlier and informed her of what was going on. When § 87(2)(b) asked what was going on one of the officers told her to “back the fuck up” and “go the fuck around the corner” (**Allegation E**). PO Klein and PO Rivera did not find any narcotics in the car but PO Klein believed that there could have been a trap within the car so he decided to call for the SNEU team. Before PO Klein could call for the SNEU team Lt. Mullen arrived on the scene followed simultaneously by PO Kennedy, PO Santana and PO Russo.

Lt. Mullen, PO Kennedy, PO Santana and PO Russo had been in the area and saw that a crowd was forming around the car stop. PO Klein informed Lt. Mullen of what was going on and then Lt. Mullen proceeded to search § 87(2)(b)'s car (**Allegation F**). Lt. Mullen also did not find any narcotics and as the officers prepared to allow § 87(2)(b) and § 87(2)(b) to leave PO Klein noticed that § 87(2)(b) was hiding something in his mouth. § 87(2)(b) stated that PO Klein then grabbed him around the front of the throat with both hands and choked him (**Allegation G**) and then § 87(2)(b) was pepper sprayed by PO Rivera (**Allegation H**). § 87(2)(b) alleged that numerous officers struck him with their flashlights (**Allegation I**) but he could not see who it was because he was blinded by the pepper spray. The officers then tackled § 87(2)(b) to the ground (**Allegation J**) and he eventually spit out a white substance that was later identified as cocaine. § 87(2)(b) was placed under arrest and taken to the 44th Precinct stationhouse. EMS responded to the stationhouse and § 87(2)(b) was taken to § 87(2)(b) where he was treated for minor injuries. § 87(2)(b) was charged with § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) old Hispanic male, is incarcerated at Sing Sing Correctional Facility and was interviewed via telephone on February 6, 2008. On September 18, 2007, at approximately 1:30pm § 87(2)(b)'s friend, § 87(2)(b) picked up § 87(2)(b) in a green Ford Windstar mini-van, at his grandmother's house located at § 87(2)(b) in the Bronx. § 87(2)(b) picked up § 87(2)(b) so he could drive § 87(2)(b) to his drug treatment program on 149th Street, across the street from § 87(2)(b) At 166th Street and Morris Avenue, § 87(2)(b) and § 87(2)(b) were pulled over by two male police officers in a marked police car. The officers got out of the police car and one officer, identified by § 87(2)(b) as PO Klein (who provided his name to § 87(2)(b) during the incident), approached the driver side of § 87(2)(b)'s van and the other officer (PO1-identified by the investigation as PO Rivera) approached the passenger side. PO Klein asked § 87(2)(b) for his license and registration and then instructed § 87(2)(b) to get out of the van and PO Rivera instructed § 87(2)(b) to do the same. § 87(2)(b) and § 87(2)(b) complied immediately and got out of the van. § 87(2)(b) and § 87(2)(b) remained at their respective sides of the van at this point. § 87(2)(b) asked PO Rivera if he could make a phone call and PO Rivera granted him permission. § 87(2)(b) called his aunt, § 87(2)(b) and informed her of what was happening. PO Rivera then instructed § 87(2)(b) to face the van, place his hands onto it and spread his legs. PO1 then frisked the outside of § 87(2)(b)'s shirt and jeans as well as his genital area. PO Rivera then reached inside § 87(2)(b)'s front and back pants pockets and removed \$1000 cash and a cigarette lighter. At this point nothing illegal was found on § 87(2)(b)'s person and PO Rivera informed PO Klein that § 87(2)(b) was "clean."

PO Rivera then walked around the van to the driver side and assisted PO Klein with § 87(2)(b) § 87(2)(b) stated that § 87(2)(b) was searched as well but he did not see what happened because he was on the opposite side of the van. § 87(2)(b) heard PO Klein ask § 87(2)(b) "What's your name? What are you doing? Did you know that your tail light was out?" § 87(2)(b) told PO Klein that he did not know that his tail light was out and it must have gone out just recently. PO Klein then asked § 87(2)(b) if he was on probation and § 87(2)(b) acknowledged that he was. PO Rivera had also asked § 87(2)(b) if he was on probation or parole and § 87(2)(b) stated that he was on parole. PO Klein and PO Rivera then informed § 87(2)(b) that since § 87(2)(b) was on parole and he was on probation they could not be together because it was a violation. § 87(2)(b) explained that he grew up with § 87(2)(b) and was driving him to his drug program. PO Klein informed § 87(2)(b) that they could get him and § 87(2)(b) in trouble for being together. At this point, PO Klein took § 87(2)(b)'s license and registration back to the police car to run the information. PO Klein returned a few minutes later and informed § 87(2)(b) that everything came back clean however he and § 87(2)(b) were not free to leave.

PO Klein and PO Rivera then proceeded to search the interior of § 87(2)(b)'s van. PO Klein searched the driver side and PO Rivera searched the passenger side. § 87(2)(b) observed the officer's search the ash tray, under the front and back seats and floor mats, and under the front dashboard. After the search was completed, PO Klein told § 87(2)(b) and § 87(2)(b) that they were clear but they still had to wait for the K-9 unit to arrive on the scene. At this point § 87(2)(b) arrived with her boyfriend, § 87(2)(b) and § 87(2)(b)'s two cousins, § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that § 87(2)(b) also came with two other individuals but he did not know their names or who they were. § 87(2)(b) asked PO Klein what was going on with § 87(2)(b) and PO Klein told § 87(2)(b) not to worry about it and to not go near § 87(2)(b) and § 87(2)(b). § 87(2)(b) remained on the scene but did not have any further interaction with the officers. Approximately 10 minutes later additional officers including a Lieutenant and a Sergeant arrived on the scene in a burgundy van, a black van and a prisoner van. § 87(2)(b) identified one of the

officers as a Lieutenant because he was wearing a white shirt and he also identified the Sergeant from the brass on his shirt. The Lieutenant, who was identified through the investigation as Lt. Brian Mullen, approached § 87(2)(b) and said, "What are you doing walking around with all that money? It's suspicious." § 87(2)(b) responded, "Suspicious for what?" and the Lt. Mullen said, "It could be from selling drugs or you could have robbed somebody." The Lt. Mullen then walked away and officers, who § 87(2)(b) believed were from the narcotics team, searched the van. § 87(2)(b) observed the officers take the carpets out of the van, the seat covers and the box speaker that was in the back seat.

A short time later PO Klein asked Lt. Mullen, "Anything else for these guys?" and Lt. Mullen said no and PO Klein asked, "Ya'll didn't find anything?" and Lt. Mullen again said no. PO Klein then informed § 87(2)(b) and § 87(2)(b) that they were free to leave but as § 87(2)(b) began to walk away PO Klein said, "Holy shit. This guy has been talking to us for an hour and he has something in his mouth." PO Klein then grabbed § 87(2)(b) around the front of the throat with both hands and choked him. PO Klein yelled, "Spit it out" and PO Rivera then pepper sprayed § 87(2)(b). PO Klein continued to choke him and instructed him to spit out whatever he had in his mouth. § 87(2)(b) stated that he could not breathe and he began to black out while PO Klein choked him. § 87(2)(b) stated that he was struck with flashlights on his elbows, wrist, and ribs by approximately 10 officers. § 87(2)(b) could not provide a description of any of the other officers because he was blinded from the pepper spray. § 87(2)(b) stated that he did not fight back or resist arrest but he did try and remove PO Klein's hands from his throat. § 87(2)(b) maintained that he did not have anything in his mouth at the time of the incident but when he arrived at the 44th Precinct an officer told him that they found crack cocaine in his mouth.

EMS responded to the 44th Precinct to treat § 87(2)(b) and the EMT informed the officers that § 87(2)(b) had to go to the hospital to be treated for pepper spray and the injuries to his face. § 87(2)(b) was taken to § 87(2)(b) where X-rays of his nose were taken. The doctor wanted § 87(2)(b) to stay over night but the officer who was with § 87(2)(b) told the doctor that he had to go back to the precinct so the arrest could be processed. § 87(2)(b) was taken back to the 44th Precinct and charged with § 87(2)(b).

§ 87(2)(b) was also taken to the 44th Precinct but he was released with a summons for § 87(2)(b). When § 87(2)(b) was released from Central Booking he went to § 87(2)(b) because his ribs were still hurting him. § 87(2)(b) stated that he was diagnosed with a broken rib.

Results of Investigation

Civilians Not Interviewed

§ 87(2)(b) was not interviewed in connection with the case because she was uncooperative with the investigation. On November 13, 2007, § 87(2)(b) did not appear for her scheduled interview and she did not call in advance to cancel or reschedule. A missed appointment letter was mailed to § 87(2)(b) and the undersigned attempted to contact § 87(2)(b) via telephone on several occasions subsequent to her missed appointment. Messages were left for § 87(2)(b) on her answering machine but § 87(2)(b) never responded to the messages or to the letter that was mailed to her house.

§ 87(2)(b) was unable to be interviewed in connection with this case because the investigator was unable to contact him and schedule an interview. When § 87(2)(b) called to file the complaint she did not provide § 87(2)(b)'s address or phone number. During his CCRB interview § 87(2)(b) was also unable to provide § 87(2)(b)'s contact information. The investigator was able to obtain § 87(2)(b)'s address from the summons that he was issued during the incident and please call letters were mailed to § 87(2)(b)'s house on March 6, 2008, and August 20, 2008. § 87(2)(b) did not respond to the letters that were mailed to his house and the investigator was unable to obtain a phone number for § 87(2)(b) on Whitepages.com or LexisNexis.

Officer Identification

During the incident PO Klein provided his name to § 87(2)(b) and § 87(2)(b) provided PO Klein's name to the investigator during his CCRB interview. During his CCRB interview PO Klein

identified PO Rivera as his partner at the time of the incident and he also provided the names of Lt. Mullen, PO Kennedy, and PO Russo as officers who were present during the incident.

Officer Statements

PO Robert Klein

PO Robert Klein was interviewed at the CCRB on April 11, 2008. On September 18, 2007, PO Klein worked from 7:05am until 3:40pm with PO Jonathan Rivera. PO Klein was on duty and was in uniform and was assigned to patrol sectors HIJK within the confines of the 44th Precinct. PO Klein and PO Rivera were assigned to marked RMP #1221. PO Klein had an entry in his memo book regarding the incident that read, "1315hrs car stop @ 166th Street and Morris. Massachusetts plates #§ 87(2)(b) 1337hrs 2 under @ location. Defendant did ingest narcotics, violently resisted arrest. Lt. Mullen on scene. 1500hrs transport perp to § 87(2)(b) ER in bus. EMT § 87(2)(b) Perp did make statement to EMS-I'm fine crack wont kill you, it's the Heroin that will kill you. 1545hrs contact Sgt. Prendergast @ 44 desk in regards to relief. 1800hrs Sgt. Prendergast at 44 pct. advised here will be no relief at hospital. § 87(2)(b) discharged from § 87(2)(b) 2130hrs 10-84 at 44th Pct."

PO Klein and PO Rivera were on patrol within the confines of the 44th Precinct and were driving southbound on Morris Avenue when they observed a Green Nissan mini-van, with Massachusetts license plates, on Morris Avenue and 166th Street with two defective brake lights. Both the left and right brake lights were not working. PO Klein, who was driving, turned on his lights and sirens and drove up behind the mini-van and indicated for the van to pull over. The driver of the van, identified by PO Klein as § 87(2)(b) complied and immediately pulled over to the side of the road. PO Klein and PO Rivera got out of their car and approached the mini-van. PO Klein approached the driver side and PO Rivera approached the passenger side where § 87(2)(b) was seated. § 87(2)(b) opened the window to speak with PO Klein and when he did so PO Klein smelled a strong odor of marijuana emanating from the van. PO Klein explained that it was not the typical marijuana smoke odor but it was obvious to him that marijuana was in the vehicle at the time or was previously in the vehicle. PO Klein has experience with narcotics because he previously worked street narcotics for the entire year of 2007. PO Klein asked § 87(2)(b) why his vehicle "reeked" of marijuana and § 87(2)(b) responded, "Because we marinate in it" which PO Klein explained meant that § 87(2)(b) and § 87(2)(b) roll up the windows and smoke marijuana.

At this point § 87(2)(b) was on his cell phone explaining to somebody that he had just been stopped by the police. § 87(2)(b) then told PO Klein that he could search the entire van and that there were no narcotics in the van because they had smoked earlier. PO Klein then instructed § 87(2)(b) and § 87(2)(b) to get out of the van and they did so. PO Klein stated that he may have frisked, but not searched, § 87(2)(b) for weapons but he was not positive. PO Klein did not know if § 87(2)(b) was frisked or searched since that would have been handled by PO Rivera. § 87(2)(b) and § 87(2)(b) were told to stand at the rear of the van and PO Rivera remained with them. PO Klein then got into the van on the driver side and searched the area under and around the driver's seat. PO Klein did not find any narcotics around the driver's seat however PO Klein stated that it appeared to him that the marijuana odor was emanating from the heat/air conditioning vents. PO Klein thought that there could be a "trap" inside the van, possibly built into the front dashboard. PO Klein explained that a trap is a hidden compartment within a vehicle typically used to store contraband such as drugs or weapons. The "trap" is usually located within the console or dashboard area and sometimes under the floor. PO Klein stated that he had never been in a situation where the odor was emanating from the vents so he decided to call the SNEU team so he could get a second opinion. PO Klein advised § 87(2)(b) and § 87(2)(b) to wait near the van and PO Klein walked back to the police car. By this time a large crowd had gathered on the scene and an unidentified male from the crowd told § 87(2)(b) "Don't worry I'm watching everything. I'm calling your lawyer right now." PO Klein asked § 87(2)(b) why there was such a big crowd gathered and § 87(2)(b) informed PO Klein that he was on parole and was now on the straight and narrow and did not want any trouble.

Before PO Klein could call for the SNEU team Lt. Mullen arrived on the scene followed simultaneously by PO Kennedy, PO Santana and PO Russo. Lt. Mullen, PO Kennedy, PO Santana and PO Russo had been in the area and happened to see the crowd that had gathered. PO Klein did not have to call for the additional officers because they were conveniently in the area and responded on their own upon seeing the crowd. PO Klein explained the situation to Lt. Mullen, PO Kennedy, PO Santana and PO Russo and informed them that he believed there was possibly a "trap" in the van. Lt. Mullen, PO Kennedy, PO

Santana and PO Russo then searched the van for “traps” and the search yielded negative results and the van proved to be clean. PO Klein did not see how the officers searched the van because he was standing with § 87(2)(b) and § 87(2)(b). At this point PO Klein was only going to summons § 87(2)(b) for having two defective brake lights since there was no evidence of narcotics in the van. PO Klein then turned his attention to § 87(2)(b) to obtain his name and pedigree information for the stop, question and frisk report. PO Klein said to § 87(2)(b) “You are on parole right?” and § 87(2)(b) nodded his head yes. PO Klein then asked, “What for?” and § 87(2)(b) held his hand up in the shape of a gun and PO Klein asked § 87(2)(b) “Why aren’t you talking?” § 87(2)(b) then began to mumble something and at this point it became obvious to PO Klein that § 87(2)(b) was choking on something. PO Klein grabbed § 87(2)(b) by the arm and said, “Spit it out.” § 87(2)(b) then spit out a “white gooey mess” onto his shirt and onto the ground. PO Klein bent over to see what it was that § 87(2)(b) had spat out at which time § 87(2)(b) jammed his hand into the back of his throat to push whatever was in his mouth back down his throat. At this point PO Kennedy and PO Santana pulled § 87(2)(b)’s arms away from his mouth and told § 87(2)(b) “Spit it out. Don’t do it. Spit it out.” § 87(2)(b) then pulled his arms away from PO Kennedy and PO Santana, dropped his weight and the officers brought § 87(2)(b) to the ground causing some minor scratches and bruises to § 87(2)(b)’s face. The investigator showed PO Klein § 87(2)(b)’s arrest photo and PO Klein positively identified § 87(2)(b) and confirmed that the bruises to § 87(2)(b)’s face were consistent with the bruises he observed at the time of the incident. At this point the crowd surged forward and PO Klein turned his attention to crowd control to ensure that nobody from the crowd got involved. PO Klein stated that a minor struggle ensued between § 87(2)(b), PO Kennedy and PO Santana but he did not see specifically what happened because his back was to them and his attention was on the crowd. PO Klein did not see PO Kennedy or PO Santana place § 87(2)(b) in a chokehold at any point and PO Klein explained that chokehold’s are “taboo” in the NYPD and should never be used. PO Klein stated that a chokehold would not be an effective way to get § 87(2)(b) to spit out whatever he had in his mouth. Specific pressure points on the neck are a more effective measure. § 87(2)(b) did eventually spit out a large plastic bag of what was determined to be 1/8oz of cocaine. PO Klein did not see how or when § 87(2)(b) spit out the bag. PO Klein acknowledged that § 87(2)(b) was pepper sprayed at some point during the struggle however PO Klein did not see which officer did so. PO Klein did not see any officer hit § 87(2)(b) in the face with a radio or flashlight nor did he do so. The evidence was secured and § 87(2)(b) and § 87(2)(b) were handcuffed and transported to the 44th Precinct.

Upon arriving at the precinct PO Klein ran § 87(2)(b)’s name for warrants and the results came back clean. PO Rivera issued § 87(2)(b) two summonses for the defective brake lights and § 87(2)(b) was allowed to leave. PO Klein examined the bag of cocaine more closely at the 44th Precinct and determined that the bag was ripped and there was a chance § 87(2)(b) had ingested a large amount of cocaine. PO Klein immediately called an ambulance and when it arrived at the stationhouse § 87(2)(b) told EMT § 87(2)(b) and PO Klein, “I’m fine crack wont kill you, it’s the Heroin that will kill you.” § 87(2)(b) was transported to the § 87(2)(b) Emergency Room where he refused treatment numerous times. The doctors wanted to pump § 87(2)(b)’s stomach because his respiration and heart rate were accelerated and it was clear to them that he had ingested cocaine. § 87(2)(b) refused treatment and told the doctor, “Cocaine isn’t going to kill me. If I was going to die I would have died already.” At approximately 9:00pm PO Klein and § 87(2)(b) returned to the stationhouse and PO Klein confirmed that § 87(2)(b) was in fact on parole as he had stated and PO Klein contacted § 87(2)(b)’s parole officer. § 87(2)(b) was subsequently given a drug test and he tested positive for cocaine and was incarcerated at Riker Island because he was in violation of his parole.

PO Jonathan Rivera

PO Jonathan Rivera was interviewed at the CCRB on May 21, 2008. On September 18, 2007, PO Rivera worked from 7:05am until 3:40pm with PO Robert Klein. PO Rivera was on duty and was in uniform and was assigned to patrol sectors H, I, J, and R within the confines of the 44th Precinct. PO Rivera and PO Klein were assigned to marked RMP #1221 and PO Rivera was the recorder for the day. PO Rivera had an entry in his memo book regarding the incident that read, “1350hrs car stop East 166th Street and Morris Avenue. 96 x2 (summons issued). 1337hrs 2 under defendant did ingest narcotics and resist arrest. Lt. Mullen on scene.”

While PO Rivera and PO Klein were driving on patrol they observed a car driving on East 166th Street in the Bronx that had two defective brake lights. PO Rivera and PO Klein signaled with their lights

and sirens for the car to stop and the driver of the car, identified as § 87(2)(b) pulled over on East 166th Street and Morris Avenue. PO Rivera and PO Klein approached the car, PO Klein on the driver side and PO Rivera on the passenger side. PO Klein instructed § 87(2)(b) to open the windows and he did so. PO Klein spoke with § 87(2)(b) and informed him that his brake lights were broken. Approximately 40 seconds later both PO Klein and PO Rivera smelled a strong odor of marijuana emanating from the interior of the car. PO Klein instructed § 87(2)(b) to get out of the car and PO Rivera instructed the passenger, § 87(2)(b) to do the same. PO Klein informed § 87(2)(b) that he was asked to get out of the car because of the strong marijuana odor coming from his car. § 87(2)(b) then informed PO Klein that the car smelled like that because he and § 87(2)(b) had smoked marijuana inside the car earlier. PO Klein asked § 87(2)(b) if there was anything illegal inside the car at that time and § 87(2)(b) stated that there was not and he told PO Klein, "Go ahead and feel free to search the car." PO Rivera stood with § 87(2)(b) and § 87(2)(b) on the sidewalk and PO Klein searched the front and back seats of the car. PO Rivera did not know if PO Klein searched the glove compartment or center console because he remained on the sidewalk with § 87(2)(b) and § 87(2)(b). PO Rivera stated that § 87(2)(b) and § 87(2)(b) were not frisked or searched. PO Rivera stated that he did not search the car at any point during the incident. PO Klein did not find any narcotics during his search of the car. While PO Klein was searching the car Lt. Mullen, who happened to be in the area, saw what was going on and he approached the scene. PO Klein explained to Lt. Mullen that there was a strong odor of marijuana coming from the car and Lt. Mullen also proceeded to search the car. PO Klein and Lt. Mullen were concerned that the car possibly contained a "trap", which is a hidden compartment to store contraband, so Lt. Mullen called the SNEU team to the location. Approximately 5 minutes later the SNEU officers arrived on the scene but PO Rivera did not know any of their names or exactly how many showed up, only that it was more than two. When the SNEU team arrived they searched the car for "traps" and contraband but they did not find anything illegal.

Once it was determined that there was nothing illegal in the car PO Klein and PO Rivera decided to only issue § 87(2)(b) summonses for the broken brake lights and obtain their information for the stop, question and frisk reports. While PO Klein and PO Rivera were speaking to § 87(2)(b) to get his pedigree information they noticed that § 87(2)(b) was mumbling and his speech was somewhat impaired. PO Rivera quickly realized that § 87(2)(b) had something in his mouth. Within 10 seconds § 87(2)(b) began shoving his fingers down his throat in an attempt to force the object down his throat. PO Rivera and PO Klein attempted to grab § 87(2)(b) and prevent him from swallowing the object but § 87(2)(b) immediately began resisting and he pushed PO Klein and PO Rivera away from him. At this point the SNEU officers saw what was happening and they ran to them to provide their assistance. By this time a crowd of more than 10 people had gathered and were watching what was going on. At this point PO Klein and PO Rivera backed away from § 87(2)(b) and turned their attention to crowd control to ensure that nobody interfered. The SNEU officers grabbed § 87(2)(b) and attempted to place him in custody but PO Rivera did not see what occurred between the SNEU officers and § 87(2)(b) because his back was to them and he was focused on crowd control. PO Rivera confirmed that at some point the SNEU officers took § 87(2)(b) to the ground but he did not see anything that occurred subsequently. PO Rivera did not see any officer strike § 87(2)(b) with a flashlight and he did not know if § 87(2)(b) was pepper sprayed.

At some point during the struggle § 87(2)(b) spit out a plastic bag filled with a white powdery substance that was determined to be crack cocaine. § 87(2)(b) was then taken to the 44th Precinct and then was taken by EMS from the 44th Precinct to § 87(2)(b) because he possibly ingested cocaine. § 87(2)(b) was charged with § 87(2)(b) and § 87(2)(b) was issued two summonses, § 87(2)(b).

Lt. Brian Mullen

Lt. Brian Mullen was interviewed at the CCRB on July 2, 2008. Lt. Mullen was assigned to the 44th Precinct at the time of the incident however he has since been promoted to Captain and was transferred to Transit District 32. For the purposes of the investigation he will be referred to as Lt. Mullen since that was his rank at the time of the incident. On September 18, 2007, Lt. Mullen worked from 6:50am until 3:25pm and he was the platoon commander. Lt. Mullen was on duty and was in uniform and he was assigned to a marked police car. Lt. Mullen did not recall if he was working with a partner or if he had a driver at the time of the incident. Lt. Mullen did not have any entries in his memo book regarding the incident.

On September 18, 2007, Lt. Mullen was doing routine patrol within the confines of the 44th Precinct. Lt. Mullen did not recall if he was working with a partner or if he had a driver at the time. At approximately 1:37pm Lt. Mullen believed that an officer put a 10-85 (need additional units) call over the radio for 166th Street and Morris Avenue in the Bronx. Lt. Mullen responded to the location and he spoke with PO Klein. PO Klein informed Lt. Mullen that he conducted a car stop and when he approached the car to speak with the driver he smelled a strong odor of marijuana coming from the car. PO Klein also stated that he observed the passenger attempt to hide something, possibly the marijuana. When Lt. Mullen arrived only PO Klein and his partner PO Rivera were on the scene. The two occupants of the car, § 87(2)(b) and § 87(2)(b) were standing on the sidewalk. Lt. Mullen then approached the passenger side of the car and he also smelled the strong marijuana odor. The front passenger side door was already open and Lt. Mullen leaned inside and conducted a “plain view” search of the car to see if there was any visible contraband but he did not find anything illegal. By this time additional officers had arrived on the scene but Lt. Mullen did not know who they were or how many officers arrived.

Lt. Mullen then went over to speak with § 87(2)(b) and § 87(2)(b) but he did not recall anything that he said to them and vice versa. As Lt. Mullen spoke with § 87(2)(b) an officer yelled, “He has something in his mouth” in reference to § 87(2)(b). Lt. Mullen turned his attention to § 87(2)(b) and he also realized that § 87(2)(b) had something in his mouth. Lt. Mullen and a few other officers grabbed § 87(2)(b) and Lt. Mullen repeatedly told § 87(2)(b) to “Spit it out. Spit it out.” § 87(2)(b) attempted to run away but Lt. Mullen kept a hold of his arms and prevented him from running away. During the struggle Lt. Mullen did not place § 87(2)(b) in a chokehold at any point and he did not see any other officer do so. § 87(2)(b) continued to struggle with the officer and eventually Lt. Mullen was able to pull § 87(2)(b) to the ground by his arms. It was at this point that § 87(2)(b) spit out what he had in his mouth and it was revealed to be a plastic bag of crack cocaine. Lt. Mullen stated that he pulled § 87(2)(b) to the ground because he was attempting to flee and he wanted to prevent § 87(2)(b) from doing so. Lt. Mullen did not hear § 87(2)(b) say that he could not breathe at any point and at no time was § 87(2)(b) pepper sprayed or struck with a flashlight. Lt. Mullen stated that no other physical force was used on § 87(2)(b) other than that necessary to bring him to the ground. Lt. Mullen did not observe any physical injuries on § 87(2)(b) and he did not hear § 87(2)(b) complain of any.

After § 87(2)(b) spit out the cocaine, he was handcuffed and taken to the 44th Precinct. Upon arriving at the stationhouse Lt. Mullen instructed EMS to be called and § 87(2)(b) be taken to the hospital because he possibly swallowed some of the cocaine. Lt. Mullen believed that PO Klein and PO Rivera accompanied § 87(2)(b) to the hospital. Lt. Mullen did not have any further interaction with § 87(2)(b) and after the incident concluded he resumed patrol.

PO Brian Kennedy

PO Brian Kennedy was interviewed at the CCRB on January 23, 2009. On September 18, 2007, PO Kennedy worked from 7:00am until 3:35pm. PO Kennedy was on duty and was in uniform and he was working with the 44th Precinct SNEU team. PO Kennedy did not recall who he was specifically working with on the date of the incident. PO Kennedy did not have any memo book entries regarding the incident.

PO Kennedy stated that he did not have any recollection of an incident with § 87(2)(b) on September 18, 2007. PO Kennedy’s memo book did not contain any entries in regards to the interaction nor does it indicate where he was before or after the time the incident took place. His memo book documents that he started his tour at 7:00am and he ended it at 2:35pm, one hour earlier than he was scheduled. PO Kennedy documented the “lost time” and went end of tour. The investigator showed PO Kennedy § 87(2)(b)’s arrest photo in an attempt to refresh his memory but PO Kennedy maintained that § 87(2)(b) did not look familiar and he did not recall having any interaction with him on the date of the incident. The investigator then provided PO Kennedy with some details about the incident in order to jog his memory but PO Kennedy maintained that he still had no recollection of the incident. It was explained to PO Kennedy that members of the SNEU team were on the scene and PO Kennedy acknowledged that he was working SNEU however he did not recall the incident.

PO Anthony Russo

PO Anthony Russo was interviewed at the CCRB on September 24, 2008. On September 18, 2007, PO Russo worked from 7:00am until 3:35pm and he was not working with a partner. PO Russo was on duty but he was not in uniform or assigned to a police vehicle. PO Russo did not have any entries in his memo book regarding the incident.

PO Russo did not have any knowledge of the incident involving § 87(2)(b) because he was assigned to INTACT training at the time of the incident. INTACT training is a yearly refresher course, held at Rodmans Neck in the Bronx, which retrains police officers in tactics and other aspects of police work. PO Russo had an entry in his memo book reflecting that he was at the training for the entire day of September 18, 2007. PO Russo's memo book entry read, "0700hrs Present for duty. Assignment INTACT training. 1535hrs End of tour." PO Russo did not go out on patrol at any time during his tour on September 18, 2007.

MOS Not Interviewed

§ 87(2)(g)

Medical Documents

An ambulance was called to the 44th Precinct stationhouse for § 87(2)(b) subsequent to his arrest. The ambulance call report states, "28-year old male in police custody at the 44th Precinct. The PD stated that the patient ingested an unknown amount of crack cocaine. Patient did not want to be brought to hospital to be evaluated. Patient had no complaints and minor bruises on face" (*Enc. 18a-18b*).

Even though § 87(2)(b) did not want to be taken to the hospital he was taken nonetheless because of the possible cocaine ingestion. On § 87(2)(b), § 87(2)(b) was taken to § 87(2)(b) where he was admitted at § 87(2)(b) and examined by § 87(2)(b). The initial assessment of § 87(2)(b) was as follows § 87(2)(a)

§ 87(2)(b). An X-ray was taken of § 87(2)(b)'s facial bones and the results showed the sinuses to be well pneumatized without fluid level or mucosal swelling. There were no fractures detected and no soft tissue swelling was evident. § 87(2)(b)'s facial bones were intact (*Enc. 19a-19n*).

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) in the Bronx but he registered under the name § 87(2)(b). § 87(2)(b) complained of multiple bruises to his face and pain to his right rib cage for five days. § 87(2)(b) stated that he was in an altercation with the police five days prior to his visit and he was seen at § 87(2)(b). § 87(2)(b) was examined and diagnosed with a rib contusion and he was prescribed 600mg of Motrin for his pain (*Enc. 20a-20l*).

Police Documents

44th Precinct Command Log: The command log contains an entry for the arrests of § 87(2)(b) and § 87(2)(b) that were entered by PO Klein. In the physical/mental conditions section of § 87(2)(b)'s entry it states that § 87(2)(b) ingested drugs. At § 87(2)(b), § 87(2)(b) was taken to § 87(2)(b). There is also an entry for § 87(2)(b) which indicates that he was released from custody at 2:25pm with a summons (*Enc. 21*).

UF-61 Complaint Report: The complaint report says that at T/P/O defendant § 87(2)(b) did attempt to swallow a large quantity of cocaine and the defendant did violently resist arrest. Lt. Mullen is listed as the supervisor on scene and PO Klein is the arresting officer (*Enc. 22a-22b*).

Property Voucher: Invoice #§ 87(2)(b) lists one plastic bag of alleged cocaine as being vouchered as evidence (*Enc. 23a-23b*).

Medical Treatment of Prisoner Form: A medical treatment of prisoner form was filled out for § 87(2)(b) because he ingested narcotics during his arrest and he sustained some bruises. The remarks sections states, "Defendant did ingest crack cocaine. Defendant also sustained bruises/scrapes while resisting arrest. Defendant was pepper sprayed while resisting arrest. Prisoner did refuse medical aid but was transported to the hospital regardless due to concern of narcotics ingestion" (*Enc. 24*).

44th Precinct Tour 2 Roll Call: The roll call confirms that PO Klein and PO Rivera were on duty and working together at the time of the incident and that PO Kennedy was working SNEU and Lt. Mullen was the platoon commander. The roll call also confirms that PO Russo had court as he maintained was the case (*Enc. 25a-25q*).

Sprint Report: The Sprint report indicates that at 1:37pm sector H had 1 under arrest on East 166th Street and Morris Avenue (*Enc. 26*).

Conviction History and Disposition of Charges

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)

Notice of Claim

§ 87(2)(b) did not file a notice of claim regarding the incident (*Enc. 30*).

Subject Officer's CCRB History

PO Robert Klein

PO Klein has been a member of the NYPD for 4 years and has never had a CCRB allegation substantiated against him (*Enc. 1*).

PO Jonathan Rivera

PO Rivera has been a member of the NYPD for 3 years and has never had a CCRB allegation substantiated against him (*Enc. 2*).

Captain Brian Mullen

Captain Mullen has been a member of the NYPD for 14 years and has never had a CCRB allegation substantiated against him (*Enc. 3a-3b*).

Complainants CCRB History

§ 87(2)(b)
This is the second complaint that § 87(2)(b) has filed with the CCRB. § 87(2)(b)
§ 87(2)(b)

Conclusions

Undisputed Facts

The undisputed facts of this case are as follows: On September 18, 2007, § 87(2)(b) and § 87(2)(b) were pulled over on East 166th Street and Morris Avenue in the Bronx by PO Klein and PO Rivera for a broken tail light. § 87(2)(b) and § 87(2)(b) were made to get out of the van and then PO Klein did search § 87(2)(b)'s van because he smelled the odor of marijuana. Lt. Mullen later arrived on the scene and he also searched § 87(2)(b)'s van for narcotics. There were no drugs found in the van during the

searches. § 87(2)(b) was pepper sprayed and he was tackled to the ground while the officers were trying to place him under arrest. § 87(2)(b) was taken to § 87(2)(b) in an ambulance because he ingested crack cocaine and had some minor bruises to his face. § 87(2)(b) refused treatment for the ingestion because he claimed that he vomited most of it up and he was fine.

Assessment of the Evidence

§ 87(2)(b) stated that after they were pulled over and asked to step out of the car he was searched by PO Rivera and § 87(2)(b) was searched by PO Klein. PO Klein stated that he may have frisked, but not searched, § 87(2)(b) for weapons but he was not positive that he did so. PO Klein did not know if § 87(2)(b) was frisked or searched since that would have been handled by PO Rivera. PO Rivera maintained that § 87(2)(b) and § 87(2)(b) were not frisked or searched by PO Klein or him at any point during the incident. At this point § 87(2)(b) and § 87(2)(b) were the only civilians on the scene and PO Klein and PO Rivera were the only officers so there were no other witnesses to this allegation.

PO Klein and PO Rivera both smelled the strong odor of marijuana coming from the interior of § 87(2)(b)'s van. When PO Klein and PO Rivera questioned § 87(2)(b) about the odor he allegedly admitted to them that he and § 87(2)(b) had smoked marijuana in the van earlier that day. PO Klein maintained that § 87(2)(b) then granted him permission to search the van because they had smoked earlier and did not currently have any marijuana in the van. § 87(2)(g)

§ 87(2)(b) PO Klein admitted that he searched the van and he stated that he got into the van on the driver side and searched the area under and around the driver's seat while PO Rivera remained with § 87(2)(b) and § 87(2)(b). § 87(2)(b) alleged however, that PO Rivera searched the passenger side of van while PO Klein searched the driver side. PO Rivera maintained that he did not search the van at any point during the incident. § 87(2)(g)

§ 87(2)(b) arrived on the scene at some point during the incident and she alleged that when she asked the officers what was going on she was told to "back the fuck up" and "go the fuck around the corner." § 87(2)(b) made this allegation when she called the CCRB to file the complaint however § 87(2)(b) was later uncooperative with the investigation so her statement about the incident was not obtained.

When Lt. Mullen arrived on the scene PO Klein informed him of the situation and he told Lt. Mullen that he suspected that there was a "trap" somewhere inside the van. PO Klein believed there was a "trap" because he thought the marijuana smell was coming from the air conditioning/heating vents. With the information he received from PO Klein, Lt. Mullen decided to also conduct a search of the van. When Lt. Mullen walked over to the van he too smelled a strong odor of marijuana coming from the interior. Lt. Mullen quickly searched the plain view areas of the van but did not find anything.

§ 87(2)(b) stated that right before the officers were going to let him and § 87(2)(b) leave, PO Klein noticed that he had something in his mouth. § 87(2)(b) alleged that when PO Klein saw this he grabbed him with both hands around the throat and choked him in order to get him to spit it out. PO Klein denied that he used a chokehold on § 87(2)(b) and he maintained that no other officer did so either. PO Klein explained that chokeholds are "taboo" in the NYPD and also are not an effective measure to get a person to spit something out. PO Rivera and Lt. Mullen also stated that § 87(2)(b) was not choked at any point during the incident. § 87(2)(b) and § 87(2)(b) were possible witnesses to this allegation however § 87(2)(b) was uncooperative with the investigation and § 87(2)(b) was unable to be contacted for an interview so their statements were not obtained. § 87(2)(b)'s medical documents do not indicate that there were any bruises on his neck or any signs that he was choked. However, officers did grab § 87(2)(b)'s arms and body and instruct him to spit out whatever was in his mouth. § 87(2)(b) struggled with the officers and initially refused to spit out what was in his mouth. During this struggle § 87(2)(b) was pepper sprayed and tackled to the ground in an effort get him to spit out the object as well as stop resisting. § 87(2)(b) also alleged that he was struck with flashlights but § 87(2)(b) was unable to see which officers hit him with their flashlights because he was blinded by the pepper spray. Additionally, PO Klein, PO Rivera,

and Lt. Mullen denied that § 87(2)(b) was ever struck with a flashlight. Eventually § 87(2)(b) spit out a white “goopy” substance that was later identified as crack cocaine.

Pleading of Allegations

§ 87(2)(g)
[REDACTED]

Recommendations

Allegation A: PO Jonathan Rivera searched § 87(2)(b)

Allegation B: PO Robert Klein searched § 87(2)(b)

PO Klein stated that he may have frisked, but not searched, § 87(2)(b) for weapons but he was not positive that he did so. PO Klein did not know if § 87(2)(b) was frisked or searched since that would have been handled by PO Rivera. PO Rivera maintained that § 87(2)(b) and § 87(2)(b) were not frisked or searched by PO Klein or him at any point during the incident. § 87(2)(g)

Allegation C: PO Robert Klein searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Klein admitted that he searched § 87(2)(b)'s van and stated that he did so with the permission of § 87(2)(b). PO Klein searched the van because there was a strong odor of marijuana emanating from the interior of the van. § 87(2)(b) also admitted to PO Klein that he and § 87(2)(b) had smoked marijuana in the van earlier which was the reason for the smell. § 87(2)(g)

Allegation D: PO Jonathan Rivera searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Klein stated that while he searched the van PO Rivera remained at the rear of the van and kept an eye on § 87(2)(b) and § 87(2)(b). § 87(2)(g)

Allegation E: An officer spoke obscenely to § 87(2)(b)

§ 87(2)(b)'s statement regarding the incident was not obtained because she did not appear for her scheduled interview at the CCRB and subsequent attempts to contact § 87(2)(b) and reschedule were unsuccessful. § 87(2)(b) did not return the investigator's phone calls and she did not respond to the letter that was mailed to her house. § 87(2)(g)

Allegation F: Lt. Brian Mullen searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Lt. Mullen admitted that he searched the van after he arrived on the scene and spoke with PO Klein. Based upon the information he received from PO Klein and the suspicion that there was a “trap” inside the van Lt. Mullen was justified in performing a search of the van. § 87(2)(g)

Allegation G: PO Robert Klein used a chokehold against § 87(2)(b)

There is not enough evidence to determine whether or not PO Klein used a chokehold on § 87(2)(b). PO Klein denied using this tactic explaining that chokehold are “taboo” in the NYPD and are not an effective measure in getting someone to spit something out of their mouth. PO Rivera and Lt. Mullen also denied that § 87(2)(b) was ever placed in a chokehold. § 87(2)(b) and § 87(2)(b) were possible witnesses to this allegation however § 87(2)(b) was uncooperative with the investigation and § 87(2)(b) was unable to be contacted for an interview so their statements were not obtained. § 87(2)(b)'s medical documents do not indicate that there were any bruises on his neck or any signs that he was choked. § 87(2)(g)

Allegation H: PO Jonathan Rivera used pepper spray against § 87(2)(b)

Allegation J: Officers used physical force against § 87(2)(b)

After it was discovered that § 87(2)(b) was hiding something in his mouth the officers grabbed § 87(2)(b) and told him to spit out whatever was in his mouth. § 87(2)(b) struggled with the officers and in an attempt to stop him from resisting and get him to spit out what was in his mouth, PO Rivera pepper sprayed him and numerous officers tackled him to the ground. § 87(2)(g)

Allegation I: Officers struck § 87(2)(b) with a flashlight.

§ 87(2)(b) alleged that officers struck him with flashlights but § 87(2)(b) was unable to see which officers did this because he was blinded by the pepper spray. There were a number of officers on the scene by this time § 87(2)(g)

Investigator:
Christopher DeNitto
Supervisor:
Reviewed by:
Reviewed by:

Date:
Date:
Date:
Date: